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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
| 09/610,229 | 07/05/2000 | Roy Malcolm Moody | 37261.p058 | 4990 |

7590 01/14/2005

Blakely Sokoloff Taylor & Zafmann
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EXAMINER

STODOLA, DANIEL P

| ART UNIT | PAPER NUMBER |
|----------|--------------|
|----------|--------------|

3679

DATE MAILED: 01/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------|--------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 09/610,229 | MOODY ET AL. | |
| | Examiner | Art Unit | |
| | Daniel P Stodola | 3679 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 September 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 10-17 is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 112

Claims 1-8 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In particular, the positive inclusion of the elements of the window frame at lines 2-3 of claim 1 and lines 3-4 of claim 2 render the claim unclear with regards to whether the combination or subcombination is being claimed. Line 1 of each of claims 1 and 2 purportedly set forth the subcombination of a window operator with elements of the combination recited in an intended use manner. However, these two claims then positively recite the window frame construction. Accordingly, is applicant now requiring that the combination be present? If the combination is not being claimed, then how do recitations of elements of that combination that are otherwise not a part of the claim constitute limitations of the claim?

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Vetter ('135). Vetter teaches a window operator for controlling the opening and closing movement of a window sash relative to a window frame. When assembled into the use position, the window frame has a sill/"mounting arrangement" (15), a pair of side jambs

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(16,17) and a top piece (unshown). The window operator of Vetter includes a mounting arrangement (constituted by the sill piece 15), an elongated threaded member (49), a drive mechanism (65), a threaded element (41), and a hinge (35). Further, Vetter includes a locking bar (60, see Fig. 1) and a lost motion device as described in Col. 3, line 35, to Col. 4, line 40.

Allowable Subject Matter

Claims 10-17 are allowed.

Response to Arguments

Applicant's arguments filed September 23, 2004 have been fully considered but they are not persuasive.

In particular, it is pointed out that the window frame recitations are merely recited as intended use elements that are not otherwise a limiting part of the claims. Thus, when the window operator is finally assembled into its intended use state, the "window frame" will possess a sill, first and second side jambs, and a top piece. In this regard, it should be kept in mind that the claims merely specify that the mounting arrangement is to be mountable to an element of the window frame, it does not specify which of the window frame elements it is to be mounted to. Therefore, it remains that the sill (15) of Vetter may constitute the "mounting arrangement" as is recited in the claims and this "mounting arrangement" is mountable to an element of the window frame, said element being either of the side jambs (16,17). To overcome this interpretation, it is suggested

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that the instant claims be further amended to either structurally define "mounting arrangement" in some further manner to distinguish from the sill constituting the "mounting arrangement" or else further define that the "element of the window frame" to which the mounting arrangement is to be mounted is the sill.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel P. Stodola whose telephone number is (703) 308-2686. The examiner can normally be reached on Monday through Friday from 6:00 a.m. to 2:30 p.m.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

STODOLA
January 7, 2005



DANIEL P. STODOLA
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600